

124 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Freebird Gas Storage, LLC

Docket No. TS08-4-000

ORDER GRANTING REQUEST FOR EXEMPTION

(Issued July 23, 2008)

1. On February 15, 2008, Freebird Gas Storage, LLC (Freebird) filed a request for exemption from the standards of conduct under Part 358 of the Commission's regulations.¹ As discussed below, this order grants the exemption.

I. Background

2. Freebird is a Commission-jurisdictional natural gas storage provider that received a certificate of public convenience and necessity on April 15, 2005.² Freebird states that since June 6, 2006, Freebird has been providing firm and interruptible storage and storage-related services in accordance with its FERC Gas Tariff, Volume No. 1 (Freebird Tariff).

¹ 18 C.F.R. Part 358 (2008); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, 73 Fed. Reg. 16,228 (Mar. 27, 2008), FERC Stats. & Regs. ¶ 32,630 (2008).

² *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 (2005).

3. Freebird states that it is an unaffiliated storage provider with market-based rates and would have been entitled to an exemption from the Commission's standards of conduct regulations, but voluntarily chose to comply with them.³ Freebird further explains that section 20 of its Tariff currently provides that it will comply with the provisions of Part 358 of the Commission's Regulations.⁴

II. Details of Filing

4. In support of its exemption request, Freebird states that it complies with the standards of conduct, "as if it were a Transmission Provider in order to ensure greater transparency and confidence to Freebird's customers in its provision of services on a non-discriminatory basis."⁵ Freebird argues that, as a storage provider with market-based rates that is not affiliated with an interstate pipeline, Freebird qualifies for an exemption from the standards of conduct provisions because it is not a "Transmission Provider" as defined in the Commission's Regulations.⁶ Freebird asserts further that the Commission has found it has no exclusive franchise area, no captive ratepayers and no market power.⁷ Freebird further states that there has been no change in its status from the time its certificate was granted.

5. Freebird also explains that on December 19, 2007, Enstor, Inc. (Enstor), an indirect, wholly-owned subsidiary of Iberdrola Renovables S.A., acquired all of the ownership interests in Freebird Assets, Inc., which in turn holds all of the ownership interests in Freebird. Freebird further states that Enstor, through its affiliates and subsidiaries, is an owner, operator, and developer of several natural gas storage projects across North America.⁸

³ See *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 at P 49.

⁴ Freebird Tariff, section 20. On April 1, 2008, Freebird filed a completely revised Tariff in Docket No. RP08-304-000. The revised tariff sheets reflect Freebird's proposal to eliminate the section 20 requirement that it comply with the Commission's standards of conduct. On May 1, 2008, the Commission issued its order accepting and suspending Freebird's tariff sheets to be effective the earlier of October 1, 2008, or on a date set by a subsequent Commission order. 123 FERC ¶ 61,105 (2008).

⁵ Freebird Request at 3.

⁶ 18 C.F.R. § 358.3(a)(3).

⁷ See *Freebird Gas Storage, LLC*, 111 FERC ¶ 61,054 at P 31.

⁸ Freebird Request at 3.

6. Freebird further states that the Commission did not require two of its affiliates, Enstor's subsidiaries, Enstor Katy Storage and Transportation, L.P. (Enstor Katy) and Enstor Grama Ridge Storage and Transportation, LLC, (Enstor Grama) to comply with the standards of conduct when it granted their certificate authorizations, in 2004 and 2005, respectively, to provide interstate storage and storage-related services at market-based rates.⁹

7. In addition, Freebird states that another Enstor subsidiary, Enstor Houston Hub Storage and Transportation, L.P. (Houston Hub), has a certificate application pending at the Commission under section 7 of the Natural Gas Act for authorization to construct, own, operate, and maintain a 30 billion cubic feet (Bcf) salt dome natural gas storage project on the North Dayton Dome in Liberty County, Texas.¹⁰ Freebird notes that Houston Hub requested the Commission to confirm that it met the regulatory requirements for the independent storage provider exemption (assuming that its request for market-based rate authority was granted), and that the Commission's standards of conduct regulations do not apply to it. The Commission found that Houston Hub is exempt from the standards of conduct under section 358.3(a)(3) of the Commission's regulations.¹¹

8. Freebird states that it is the only affiliate of Enstor that is subject to the standards of conduct. Freebird further states that, because Freebird has no employees, the burden of complying with the standards of conduct falls on Freebird's manager, Enstor Operating Company LLC (Enstor Operating). Freebird argues that it is unduly burdensome to require it to continue to comply with the standards of conduct regulations when it is expressly exempted from the requirements. Freebird asserts that its affiliates, Enstor and Enstor Operating, are active participants in the industry and are aware of the prohibitions against undue discrimination under the Natural Gas Act, as well as the Commission's Anti-Manipulation Rule.¹²

⁹ See *Katy Storage and Transp., L.P.*, 106 FERC ¶ 61,145 (2004); *Grama Ridge Storage and Transp., LLC*, 113 FERC ¶ 61,301 (2005). See also, Freebird Request at 4.

¹⁰ Houston Hub's certificate application was granted subsequent to the filing of Freebird's request. *Enstor Houston Hub Storage and Transp. L.P.*, 123 FERC ¶ 61,019 (April 4, 2008).

¹¹ *Id.* P 73.

¹² See 18 C.F.R. § 1c.1 (2008); See also *Prohibition of Energy Market Manipulation*, Order No. 670, FERC Stats. and Regs. ¶ 31,202, *reh'g denied*, 114 FERC ¶ 61,300 (2006).

III. Public Notice, Intervention and Comments

9. Notice of Freebird's filing was published in the *Federal Register*, 73 Fed. Reg. 11,106 (2008), with protests or motions to intervene due on or before March 10, 2008. No interventions, protests, or comments were filed.

IV. Discussion

10. For the reasons discussed below, we will grant Freebird's request for exemption from the Transmission Provider standards of conduct requirements. The standards of conduct, adopted in Order No. 2004 and codified in Part 358 of the Commission's regulations,¹³ govern the relationships between Transmission Providers and their marketing and brokering affiliates. Section 358.3(a)(3) of the Commission's regulations, specifically excludes from the definition of a Transmission Provider, a natural gas storage provider authorized to charge market-based rates that is not interconnected with the jurisdictional facilities of any affiliated interstate natural gas pipeline, has no exclusive franchise area, no captive rate payers and no market power. 18 C.F.R. § 358.3(a)(3).

11. The Commission has previously clarified that independent natural gas storage providers are not Transmission Providers for purposes of the standards of conduct regulations if they meet the criteria set forth in section 358.3(a)(3) of the Commission's regulations.¹⁴ The Commission finds that Freebird is not a Transmission Provider as defined in the standards of conduct regulations and thus qualifies for exemption from the Commission's regulations because it has no captive customers, no exclusive franchise area, is authorized to charge market-based rates, is not interconnected with any affiliated interstate natural gas pipeline and has no market power. Based on the statements in Freebird's filing, we find that Freebird is not a Transmission Provider for purposes of Part 358 of the Commission's regulations.

¹³ 18 C.F.R. Part 358 (2008).

¹⁴ See *Pine Prairie Energy Center, LLC, et al.*, 114 FERC ¶ 61,033 (2006) (granting requests from two separate providers).

The Commission orders:

Freebird's request for exemption from the standards of conduct requirements of Part 358 of the Commission's regulations is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.